

ALLAHABAD HIGH COURT

Girja Shankar Shukla

Vs.

Senior Superintendent of Post Offices

Civil Misc. Appln. No. 90 of 1957
(Randhir Singh, J.)

17.09.1957

ORDER

1. This is a petition under Article 226 of the Constitution of India for a writ of certiorari against the Senior Superintendent of Post Offices, Lucknow Division, the Postmaster, G.P.O., Lucknow, and the Director of Postal Services, U.P. Lucknow for the quashing of three orders, one dated 30-4-1955, another dated 12-5-1955 and the third dated 10-10-1955, passed in appeal by the Director of Postal Services.

2. It appears that the applicant made a representation to the Minister of Communications against the order dated 19-10-1955 dismissing the appeal of the applicant against the order of dismissal passed by opposite party No. 1. The President of India, however, rejected the representation and the applicant was informed of the decision of the President, by opposite party No. 3, the Director of Postal Services. He has not impleaded the Union of India as a party to this petition but has asked for the quashing of the orders mentioned above on the ground that, the records in which the orders were passed were in the possession of opposite parties 1 to 3.

3. A preliminary objection was taken on behalf of the opposite parties on the ground that the present petition was not maintainable in this Court inasmuch as the final order rejecting the representation of the applicant against the order of dismissal had been passed by the President of India which order could not be quashed by this Court inasmuch as the President of India was not within the jurisdiction of this Court.

Another preliminary point taken on behalf of the opposite parties is that the order dated 30-4-1955 was a wholly independent order passed in April 1955 and no application for a writ for quashing that order could be instituted in 1957. It was further contended that the orders dated 12-5-1955 and 19-10-1955 had merged in the final orders passed by the President of India.

4. Learned Counsel for the applicant has argued that the record containing the final order passed by the President of India was in the possession of the opposite parties and as such a writ of certiorari for the quashing of that order could be passed by this Court. An affidavit has been filed on behalf of the opposite parties that the records of the proceedings in connection with the

representation made to the President of India were not in the possession of the opposite parties. It was then contended on behalf of the applicant that the opposite parties had authentic copies of the orders passed on the representation of the applicant and as such this Court could quash the order. I am unable to agree with this contention. If the person who has passed the order is within the jurisdiction of the Court a writ quashing the order could be passed by this Court even though the record may not be in the possession of that person and may be in the possession of some agent who was amenable to his orders though residing outside the jurisdiction of the Court. The converse proposition, however, is not true. If the principal happens to reside outside the jurisdiction of the Court and the agent though residing within the jurisdiction of the Court cannot be directed to get the records from his principal, The mere existence of a certified copy or an authentic copy of the order in possession of somebody within the jurisdiction of the Court would not empower the Court to quash the original order.

There is thus no force in the contention raised on behalf of the applicant that this court has jurisdiction to set aside an order passed finally by the President of India.

5. The next point raised on behalf of the applicant was that the order of dismissal dated 12-5-1955 was a nullity inasmuch as it violated against the principles of natural justice and as such it could not merge in the appellate order and reliance was placed on a ruling of the Madras High Court reported in *Collector of Customs Madras v. A.H.A. Rahiman*¹, In this reported case it was observed by a Division Bench of the Madras High Court that an order which is a nullity would continue to be a nullity even though confirmed in appeal and the mere fact that an appeal had been decided by an authority outside the jurisdiction of the Court would not interfere with the jurisdiction of the High Court in quashing the order which was a nullity. It is now contended that the order of dismissal passed by the Senior Superintendent of Post Offices was a nullity inasmuch as he had taken into consideration the previous record of the applicant in deciding upon the quantum of punishment to be awarded to the applicant. Reliance has been placed on a judgment of the Nagpur High Court reported in *Gopalrao Damodarji v. State Govt. of Madhya Pradesh*², In this reported case it appears that certain adverse remarks found in the character roll of a person were taken into consideration in awarding punishment without the man being apprised of those remarks. Each case is decided on its own facts. In the case mentioned above it appears that the person to whom punishment was awarded was unaware of the adverse remarks made against him in his service book and no opportunity was afforded to him to show cause against those remarks or against those remarks being taken into consideration. In the present case, however, those punishments were taken into consideration which were not only within the knowledge of the applicant but which he had suffered earlier. The past record or the previous offences of the applicant were not taken into consideration at the time of inquiry into the specific charge levelled against him and it was only after he had been found guilty of that charge that his previous record which was very well known to him was taken into consideration in arriving at the quantum of punishment to be awarded to the applicant. This is evidently not opposed to any principles of natural justice. If a person has been guilty of indiscipline and has been punished on

previous occasions those factors are usually taken into consideration in awarding punishment though they should not be taken into

¹ AIR 1957 Mad 496

² AIR 1954 Nag 90

consideration in finding the applicant guilty of that particular charge. A perusal of the order of dismissal passed by opposite party No. 1, however, shows that the past record of the applicant was taken into consideration only after he had been found guilty of the charge. There has, therefore, been no violation of the principles of natural justice in this case and the order passed by the Senior Superintendent of Post Offices cannot be held to be a nullity. It has, therefore, merged in the order of appeal and in the order rejecting the representation. The final order has been passed by an authority which is not within the jurisdiction of this Court and the present petition, therefore, does not lie in this Court.

6. The petition is, therefore, rejected.

Petition rejected.